U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB Nos. 16-0214 BLA
and 16-0215 BLA

CARL HALL (o/b/o and Widow of NELVA L. HALL) Claimant-Petitioner	)	
v.	)	DATE ISSUED: 02/02/2017
GOLDEN OAK MINING COMPANY, L.P. Employer-Respondent	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Morris D. Davis, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe, Brad A. Austin, and M. Rachel Wolfe (Wolfe, Williams & Reynolds), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig), Washington, D.C., for employer.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals the Decision and Order (2011-BLA-05151, 2015-BLA-05876) of Administrative Law Judge Morris D. Davis denying benefits on claims filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[2] This case involves a miner's claim filed on August 10, 2009, and a survivor's claim filed on October 3, 2011.

After crediting the miner with 12.188 years of coal mine employment,[3] the administrative law judge found that the evidence established that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2).[4] However, the administrative law judge found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied benefits in the miner's claim. The administrative law judge further found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Accordingly, the administrative law judge also denied benefits in the survivor's claim.

On appeal, claimant challenges the administrative law judge's finding regarding the length of the miner's coal mine employment. Claimant also argues that the administrative law judge erred in finding that the medical opinion evidence did not

[1] Claimant is the surviving spouse of the miner, who died on September 6, 2011. Director's Exhibit 4.

[2] Claimant's appeal in the miner's claim was assigned BRB No. 16-0214 BLA, and her appeal in the survivor's claim was assigned BRB No. 16-0215 BLA. By Order dated June 9, 2016, the Board consolidated these appeals for purposes of decision only.

[3] The record reflects that the miner's last coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis and that his death was due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment are established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305. Because the administrative law judge credited the miner with less than fifteen years of coal mine employment, he found that claimant was not entitled to the Section 411(c)(4) presumption. Therefore, the administrative law judge addressed whether claimant satisfied her burden to establish all of the elements of entitlement under 20 C.F.R. Part 718.

establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant further contends that the administrative law judge erred in finding that the medical opinion evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Employer responds in support of the administrative law judge's denials of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Length of Coal Mine Employment

Claimant contends that the administrative law judge erred in crediting the miner with less than fifteen years of coal mine employment. Claimant bears the burden of proof to establish the number of years the miner actually worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). As the regulations provide only limited guidance for the computation of time spent in coal mine employment, the Board will uphold the administrative law judge's determination if it is based on a reasonable method and supported by substantial evidence in the record. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Dawson v. Old Ben Coal Co.*, 11 BLR 1-58 (1988) (en banc).

In addressing the length of the miner's coal mine employment, the administrative law judge considered the miner's Employment History Form (CM-911a), reported work histories, and Social Security records.[5] The administrative law judge found that the miner's Employment History Form was of limited use in calculating the length of his coal mine employment because it does not include the starting and ending dates for all of the listed coal mine employment. Decision and Order at 13. The administrative law judge further found that the twenty-five year coal mine employment history that the miner reported to Drs. Baker, Dahhan, and Jarboe was not supported by documentation in the

[5] The administrative law judge noted that the record does not contain any direct testimony from the miner regarding his coal mine employment history. Decision and Order at 13.

record.[6] *Id.* The administrative law judge, therefore, found that the miner's Social Security records were the most reliable evidence as to the length of his coal mine employment. *Id.* Based upon his review of those records, the administrative law judge credited the miner with 12.188 years of coal mine employment. *Id.* at 15.

Claimant argues that the administrative law judge erred in not considering the work histories that the miner reported to his physicians.[7] Claimant's Brief at 8. Contrary to claimant's contention, the administrative law judge considered the miner's reported work histories, but determined that they were not supported by documentation in the record and, therefore, were entitled to little weight. Decision and Order at 13. Moreover, the administrative law judge permissibly determined that the most probative evidence regarding the miner's length of coal mine employment was his Social Security records. *See Muncy*, 25 BLR at 1-27.

For the years 1954 through 1977, relying on claimant's Social Security records, the administrative law judge identified the number of quarters in each year in which the miner earned at least $50.00 from coal mine employment, and credited the miner with a total of twenty quarters, or five years of employment, for this period. Decision and Order at 14. The Board has held that this is a reasonable method of computation for coal mine employment prior to 1978. *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984).

The administrative law judge next credited the miner with an additional 7.188 years of post-1977 coal mine employment, by dividing the miner's yearly income as reflected in his Social Security earnings records, by the "wage base" as reported in Exhibit 609 of the *Coal Mine* (*Black Lung Benefits Act*) *Procedure Manual* (*BLBA Procedure Manual*).[8] Decision and Order at 14-15. Based on this finding, the

[6] The administrative law judge noted that the miner claimed 19.5 years of coal mine employment on his application for benefits. Decision and Order at 13; Director's Exhibit 2.

[7] Although claimant contends that the district director's calculation of 14.3 years of coal mine employment "was closer" to the length of the miner's coal mine employment, Claimant's Brief at 9, claimant does not explain how the district director's determination assists her in establishing the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption.

[8] Although the administrative law judge did not specifically cite to 20 C.F.R. §725.101(a)(32)(iii), it is clear that he was attempting to apply the formula at that subsection, which states that an adjudication officer may "divide the miner's yearly

administrative law judge found that claimant did not establish that the miner had the requisite fifteen years of qualifying coal mine employment to invoke the Section 411(c)(4) presumption.

Subsequent to the issuance of the administrative law judge's Decision and Order, the Board addressed whether an administrative law judge could rely upon Exhibit 609 to calculate the length of a miner's coal mine employment. In its published decision in *Osborne v. Eagle Coal Co.*, 15-0275 BLA, slip op. at 8-9 (Oct. 5, 2016) (pub.), the Board observed that Exhibit 609 of the *BLBA Procedure Manual*, entitled "*Average Wage Base*," does not contain "the coal mine industry's average daily earnings," as specified in 20 C.F.R. §725.101(a)(32)(iii). Rather, the Board noted that Exhibit 609 reports the Social Security Administration's wage base table, which sets forth the maximum amount of yearly earnings on which employers and employees in all occupations are required to pay Social Security tax. *Id.* The Board, therefore, held that reliance on Exhibit 609 to determine the length of a miner's coal mine employment when the formula at 20 C.F.R. §725.101(a)(32)(iii) is applied is not appropriate because it contains a wage base that is not specific to the coal mine industry.[9] In contrast, the Board noted that the table at Exhibit 610 of the *BLBA Procedure Manual*, entitled *Average Earnings of Employees in Coal Mining*, contains the information specified in 20 C.F.R. §725.101(a)(32)(iii), i.e., "the coal mine industry's average daily earnings for that year." *Id.*

Because the method used by the administrative law judge to calculate the miner's employment history is inconsistent with the Board's holding in *Osborne*, we must vacate

---

income from work as a miner by the coal industry's average daily earnings for that year." 20 C.F.R. §725.101(a)(32)(iii).

[9] Although Exhibit 609 does not address the yearly earnings of coal miners, and therefore is not appropriate for use in the formula at 20 C.F.R. §725.101(a)(32)(iii), the Board did identify the purpose for which Exhibit 609 exists, noting the Director's explanation that:

> Exhibit 609 actually sets out the limit on income subject to Social Security tax for each year since 1937. As explained in the [BLBA] Procedure Manual, this table's purpose is to caution that the Social Security earnings record may underreport a miner's true wages because the earnings record "will not normally show income greater than the wage base amount for a given year."

Osborne v. Eagle Coal Co., 15-0275 BLA, slip op. at 8 n.10 (Oct. 5, 2016) (pub.).

his finding that claimant established only 12.188 years of coal mine employment. Specifically, because the administrative law judge used Exhibit 609, as opposed to Exhibit 610, when applying the formula at 20 C.F.R. §725.101(a)(32)(iii) to calculate the miner's employment after 1977, we vacate his finding of 7.188 years of coal mine employment from 1978 to 1992. *See Muncy*, 25 BLR at 1-27; *Dawson*, 11 BLR at 1-60. Additionally, in crediting the miner with only three quarters of employment in each of the years 1974, 1975, 1976, and 1977, the administrative law judge did not consider, as outlined in *Osborne*, that because the miner's reported income in each of those years is identical to the Exhibit 609 Social Security wage base table, the miner may have had unreported earnings beyond the third quarter in each of those years. *Osborne*, 15-0275 BLA, slip op. at 8 n.10; *see also* discussion, *supra*, at 5 n.9. We therefore must vacate the administrative law judge's determination that the miner had only five years of coal mine employment prior to 1978.[10]

The administrative law judge also made an alternative finding that the miner had 14.558 years of coal mine employment, based upon a comparison of his yearly earnings and the average earnings of employees in coal mining found in Exhibit 610 of the *BLBA Procedure Manual*. Decision and Order at 15 n.35. Although an administrative law judge may permissibly calculate the length of coal mine employment using Exhibit 610, 20 C.F.R. §725.101(a)(32)(iii), the administrative law judge in this instance did not explain how he made his calculations.[11] Consequently, the administrative law judge's

[10] Because it appears that the administrative law judge also did not consider all of the Social Security records relevant to claimant's pre-1978 employment, on remand the administrative law judge is instructed to consider the miner's Social Security records reflecting employment with Fleming Coal Company in the first quarter of 1955, and with Westmoreland Coal Company during the final three quarters of 1972. Decision and Order at 14; Director's Exhibit 6. Moreover, the administrative law judge is instructed to consider the miner's 1973 Social Security records reflecting income from Westmoreland Coal Company in the first three quarters of the year and from Beth Elkhorn Corporation during the final two quarters of the year. *Id.*

[11] The administrative law judge's sole explanation for his alternative finding of 14.558 years is:

> Employer stipulated to 14.31 years of [coal mine employment] and Claimant's counsel agreed to at least 14.31 years. (TR 6). I also calculated the Miner's [coal mine employment] with credit for time at Martins Electric, REGA and R&B Drilling in the event they were coal mine related and by using the Average Earnings of Employees in Coal Mining (Figure 610) doubled to get realistic average annual earnings for the years after

alternative finding of the length of the miner's coal mine employment does not comport with the Administrative Procedure Act (APA), which provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Moreover, the administrative law judge's alternative calculation appears to incorporate his earlier findings with respect to the miner's pre-1978 employment, which we have vacated for the reasons identified above. For the foregoing reasons, we must vacate the administrative law judge's alternative calculation of 14.558 years.

Accordingly, we remand this case to the administrative law judge for recalculation of the miner's coal mine employment. On remand, the administrative law judge may use any reasonable method of computation in determining the length of the miner's coal mine employment, consistent with the instructions herein and the Board's decision in *Osborne*.[12] *See Muncy*, 25 BLR at 1-27; *Kephart*, 8 BLR at 1-186; *Hunt*, 7 BLR at 1-710-11, *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003).

If the administrative law judge credits the miner with at least fifteen years of coal mine employment, he must next determine if claimant has established that the miner had at least fifteen years of *qualifying* coal mine employment.[13] Because the parties stipulated that the miner was totally disabled, Decision and Order at 16, if the administrative law judge credits the miner with at least fifteen years of qualifying coal mine employment, then claimant is entitled to the rebuttable presumption that the miner's

---

> 1977, and it totals 14.558 years. The Miner's [coal mine employment] falls short of the 15 year threshold required to invoke the presumption regardless of how his coal mining time is calculated.

Decision and Order at 15, n.35.

[12] The administrative law judge, on remand, must ensure compliance with the requirement, pursuant to 20 C.F.R. §725.101(a)(32)(iii), that a copy of Exhibit 610 "be made a part of the record *if* the adjudication officer uses this method to establish the length of the miner's work history." 20 C.F.R. §725.101(a)(32)(iii) (emphasis added).

[13] "Qualifying" coal mine employment consists of either employment in an underground coal mine or employment in an above-ground coal mine in conditions that are substantially similar to those in an underground mine. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

total disability and death were due to pneumoconiosis. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305. In that event, the administrative law judge must then assess whether employer has rebutted the applicable presumption. 20 C.F.R. §718.305(d).

Because the administrative law judge already analyzed these claims under 20 C.F.R. Part 718 with the burden of proof on claimant, in the interest of judicial economy we will address claimant's contention that the administrative law judge erred in finding that she failed to establish that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a), or that his death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b).

The Miner's Claim

Without the Section 411(c)(4) presumption, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Claimant asserts that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[14] Claimant specifically contends that the administrative law judge erred in his consideration of the opinions of Drs. Baker and Perper. We disagree. Although Drs. Baker and Perper diagnosed clinical pneumoconiosis,[15] the administrative law judge

[14] Because claimant does not challenge the administrative law judge's findings that the x-ray evidence is negative for the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), and that there is no biopsy evidence of record that could establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Moreover, because there is no evidence of complicated pneumoconiosis in the record, the Section 718.304 presumption is inapplicable. *See* 20 C.F.R. §718.304.

[15] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconiosis, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

permissibly discredited their opinions because he found that they were inconsistent with the weight of the x-ray evidence, which was negative for clinical pneumoconiosis. *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 881, 25 BLR 2-213, 218 (6th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); Decision and Order at 18-20; Director's Exhibit 11; Claimant's Exhibit 1. Because no other physician diagnosed clinical pneumoconiosis, we affirm the administrative law judge's finding that the medical opinion evidence did not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In evaluating whether the medical opinion evidence established the existence of legal pneumoconiosis,[16] the administrative law judge permissibly accorded less weight to Dr. Perper's diagnosis[17] because he found that it was not sufficiently reasoned, noting that the doctor "offered minimal explanation" for his diagnosis. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 19. The administrative law judge also permissibly accorded less weight to Dr. Baker's diagnosis of legal pneumoconiosis,[18] because he found that it was based upon an inaccurate coal mine employment history.[19] *See Creech v. Benefits Review Board*, 841 F.2d 706, 709, 11

[16] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

[17] Dr. Perper opined that the miner had "pure restrictive lung disease that may be considered similarly as a respiratory dysfunction correlating with and reflecting the severe interstitial pulmonary fibrosis type of clinical (medical) pneumoconiosis or additionally *as a form of legal pneumoconiosis*." Claimant's Exhibit 1 at 16.

[18] Dr. Baker diagnosed legal pneumoconiosis in the form of a restrictive ventilatory defect due to coal dust exposure, and hypoxemia due to coal dust exposure and cigarette smoking. Director's Exhibit 11. Dr. Baker also diagnosed legal pneumoconiosis in the form of chronic bronchitis due to coal dust exposure and cigarette smoking. *Id.*

[19] The administrative law judge noted that while he credited the miner with 12.188 years of coal mine employment, Dr. Baker relied upon a twenty-five year coal mine employment history. Decision and Order at 19; Claimant's Exhibit 1. We note that the administrative law judge, on remand, would only have to consider claimant's burden to establish the existence of legal pneumoconiosis if he again credits the miner with less than fifteen years of coal mine employment, a discrepancy which the administrative law judge has already permissibly found is significant enough to discredit Dr. Baker's

BLR 2-86, 2-91 (6th Cir. 1988) (holding that the administrative law judge permissibly found physician's opinion "unreasoned" inasmuch as it was based on erroneous coal mine employment history); Decision and Order at 19. Because no other physician diagnosed legal pneumoconiosis, we affirm the administrative law judge's determination that the medical opinion evidence did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), we hold that claimant cannot establish entitlement in the miner's claim without invocation of the Section 411(c)(4) presumption. *See Hensley*, 700 F.3d at 881; 25 BLR at 218; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

The Survivor's Claim

Benefits are payable on survivors' claims when the miner's death is due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, the 20 C.F.R. §718.304 irrebuttable presumption relating to complicated pneumoconiosis is applicable, or the Section 411(c)(4) presumption is invoked and not rebutted. 20 C.F.R. §718.205(b)(1)-(4). The surviving spouse is automatically eligible for benefits if the miner is determined eligible for benefits. 30 U.S.C. §932(*l*) (2012).

The administrative law judge addressed whether claimant could establish entitlement to survivor's benefits without the Section 411(c)(4) presumption. In considering whether the evidence established that the miner's death was due to pneumoconiosis, the administrative law judge considered Dr. Perper's opinion and the miner's death certificate.[20] Dr. Perper opined that the miner's "primary cause of death

---

opinion. *See Creech v. Benefits Review Board*, 841 F.2d 706, 709, 11 BLR 2-86, 2-91 (6th Cir. 1988).

[20] The administrative law judge also considered Dr. Jarboe's opinion. Decision and Order at 20. Dr. Jarboe opined that the miner's death was caused by interstitial pulmonary fibrosis. Employer's Exhibit 5. Because Dr. Jarboe opined that the miner's interstitial fibrosis was unrelated to his coal dust exposure, his opinion does not support a finding that the miner's death was due to pneumoconiosis. Claimant does not assert that

was [the] interstitial type of coal workers' pneumoconiosis with non[-]elevated ST myocardial infarction being a secondary and terminal cause of death, likely triggered by the severe hypoxemia associated with coal workers' pneumoconiosis." Claimant's Exhibit 1 at 23. The miner's death certificate attributes the miner's death, in part, to acute or chronic respiratory failure due to black lung. Director's Exhibit 4.

The administrative law judge accorded little weight to Dr. Perper's opinion because it was based on the mistaken premise that the miner suffered from clinical pneumoconiosis. Decision and Order at 20. The administrative law judge further found that the miner's death certificate, standing alone, was not sufficient to establish that the miner's death was due to pneumoconiosis. *Id.* at 20-21. The administrative law judge, therefore, found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b).

Claimant contends that the administrative law judge erred in failing to explain why Dr. Perper's opinion did not establish that the miner's death was due to pneumoconiosis. Contrary to claimant's contention, the administrative law judge permissibly found that Dr. Perper's opinion regarding the cause of the miner's death was entitled to less weight because it was based upon a mistaken premise, i.e., that the miner suffered from clinical pneumoconiosis. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103, *Clark*, 12 BLR at 1-155; Decision and Order at 20. Because claimant does not raise any other contentions of error, we affirm the administrative law judge's determination that claimant did not affirmatively establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Therefore, we affirm the administrative law judge's determination that claimant did not establish her entitlement to survivor's benefits under 20 C.F.R. Part 718, without the benefit of the Section 411(c)(4) presumption.

In summary, if the administrative law judge, on remand, credits the miner with less than fifteen years of qualifying coal mine employment, he may deny benefits in both the miner's claim and the survivor's claim.[21] However, should the administrative law

---

Dr. Jarboe's opinion supports a finding of death due to pneumoconiosis; moreover, she contends that the doctor's opinion is "fatally flawed." Claimant's Brief at 29.

[21] Because we have held that the administrative law judge's findings and determinations with respect to whether the miner suffered from pneumoconiosis and whether the miner's death was due to pneumoconiosis were permissible, benefits properly would be denied on remand if his findings and determinations in that regard are reinstated.

judge, on remand, credit the miner with at least fifteen years of qualifying coal mine employment, claimant is entitled to invocation of the Section 411(c)(4) presumption that the miner was totally disabled due to pneumoconiosis, and the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis. 30 U.S.C. § 921(c)(4) (2012); *see* 20 C.F.R. §718.305.

If the administrative law judge, on remand, finds that employer fails to establish rebuttal of the Section 411(c)(4) presumption that the miner was totally disabled due to pneumoconiosis, he must award benefits in the miner's claim. In addition, claimant would be derivatively entitled to survivor's benefits pursuant to Section 932(*l*). 30 U.S.C. §932)(*l*) (2012); *Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013). However, if the administrative law judge, on remand, finds that employer has rebutted the Section 411(c)(4) presumption of total disability due to pneumoconiosis in the miner's claim, he must consider whether employer has rebutted the Section 411(c)(4) presumption of death due to pneumoconiosis in the survivor's claim.

Accordingly, the administrative law judge's Decision and Order is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge